

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No.581 of 1991

**

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

STATE OF GUJARAT

Versus

BALWANTSINH DAHYABHAI DODIYA JAGHADIYA DIST.BHARUCH

Appearance:

Shri B.Y. Mankad, ADDL. PUBLIC PROSECUTOR for Petitioner
Shri Zubin Bhandal for MR PB MAJMUDAR for Respondent.

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 06/10/98

ORAL JUDGEMENT :

The State being aggrieved by the order of
acquittal recorded on 23.5.1991 by the learned Chief

Judicial Magistrate, Bharuch in Criminal Case No.44714 of 1989, wherein the accused was tried for offences punishable under secs.409, 477 and 477A of the IPC, has preferred the present Appeal.

2. One Shri P.R. Bodana, Accounts Officer, Taluka Panchayat, Jaghadia addressed a complaint in writing to the Police vide exh. 11 on 19.11.1986, making several allegations against respondent herein, who is referred to as accused hereinafter. From the complaint it transpired that on different dates, namely, 22.3.1982, 24.6.1983, 4.10.1982 and 7.10.1983, the teachers were paid less amount and additional amount was not deposited in the treasury. The accused by six cheques on different dates withdrew a sum of Rs.50,337.30 from the bank for payment and the amount has not been paid to the persons concerned. It is alleged that though for making payment under different heads for which the amount was withdrawn by cheques, in some cases before some time amount was already paid to the teachers by the Principal of the concerned group school(s). The tenor of the complaint is that there was no need to withdraw this amount as the amount was either paid or was already with the Accounts Section. However, by withdrawing the amount the accused committed offences punishable under sec.409, 477 and 477A of IPC. Against this very accused one complaint was filed which resulted in acquittal. Against which the State preferred an appeal, which has been dismissed on merits. In this case it appears that the Investigating Officer has not discharged his duties properly and in perfunctory manner he has investigated the matter and the real offender is not brought to the court.

3. It is alleged by the prosecution that the accused withdrew the amount from the Bank for which reliance is placed on letter, exh.20, issued by the State Bank of India, Jaghadia Branch, inter alia, communicating that various amounts referred to in the letter were paid to Shri D.B. Dodiya. Below mentioned is the chart giving details of payment :

| Cheque No. & Exhibit No. | Date of cheque & date of payment gister at pages nos. | Amount Rs. | Entry in Che- que Book Re- |
|--------------------------------|--|---------------|-------------------------------|
|--------------------------------|--|---------------|-------------------------------|

| | | | |
|--------|-----------|-----------|-----------|
| 1 | 2 | 3 | 4 |
| 183356 | 12.7.1982 | 13,569.00 | 115, 119, |

| | | |
|--------|--------------------------|----------------------|
| Exh.14 | paid on the same day | 131, 143 and 117. |
| 183377 | 27.8.1982 | 09,630.00 |
| Exh.15 | paid on the same day | |
| 183618 | 8.10.1982 | 10,261.70 |
| Exh.16 | paid on the same day. | |
| 183619 | 22.10.1982 | 05,134.40 |
| Exh.17 | paid on the same day. | |
| 183659 | 6.12.1982 | 06,280.70 |
| Exh.18 | 7.12.1982 | |
| 183675 | 12.1.1983 | 05,460.90 |
| Exh.19 | 13.1.1983 | |

4. It is required to be noted that for the purpose of indicating that the bank has paid the amount, a copy of the account has been produced duly certified by the officer of the Bank and though the same is admissible in evidence under the Bankers Book Evidence Act, the trial court has not admitted the same, in evidence. The trial court ought to have considered this aspect and ought to have admitted the entries in evidence.

5. From the counters, exh.14 to 19, it appears that the same are signed by the Project Officer-cum-Taluka Development Officer. The Investigating Officer has not taken care to collect the cheques from the Bank and to collect evidence from the Bank as to how cheques were presented and how and to whom the amounts were paid. It appears that as per the prosecution case all the cheques were bearer cheques. In that case it was the duty of the Investigating Officer to investigate thoroughly as to who encashed cheques and to whom the amount was paid. It seems that he has relied on a letter issued by the Manager of the State Bank of India for the purpose of proof that accused encashed the cheques. This is certainly a serious lacuna in the investigation. If the

cheques were not signed by the accused, but by the competent authority, namely, the Project Officer-cum-Taluka Development Officer, it was his duty to record statement of that officer and to collect the material as to under what circumstances he signed the cheques and under what circumstances the cheques were given to the accused for collecting money from the Bank. It is not the case that accused was authorised signatory. If by proper evidence it can be established that it is the accused who was given cheques for collecting money from the Bank, and it is the accused who withdrew the amount from the Bank, it would be for the accused to explain as to how the amount has been paid to the person concerned. But it seems that neither the Investigating Officer nor the senior officers of the Government departments have taken care in the instant case. As a result of carelessness the Government is losing the amount.

6. According to Shri Bharda, learned advocate for the respondent, it is usual procedure that first signature is obtained on the voucher of the person concerned and thereafter the officer concerned would issue the cheque and after collecting the amount from the Bank the same will be paid to the person concerned. According to him all the vouchers were there on record and after handing over charge on his transfer the vouchers are missing from the office for which he need not be blamed. The prosecution has not led sufficient evidence to establish before the court about entrusting cheques to the accused for encashment and that the Bank made payment of the cheques to the accused.

7. From the charge sheet it appears that the Investigating Officer has satisfied himself by recording the statement of Sunderlal Nanalal, the officer of the Bank, who does not through any light in the matter. Laljibhai Muljibhai who also does not through any light in the matter. Ibrahim Umarji, who is from the Accounts Section, has no personal knowledge. Except recording statement of some persons and drawing Panchnama, nothing has been done in the matter by him. Charge sheet reveals that statement of only these three witnesses were recorded.

8. It is a fit case wherein the State Government should inquire into the matter as to why the Investigating Officer has not properly investigated the matter. It was his duty to investigate the matter thoroughly without any bias. It was for him to collect

proper evidence and to place it before the Court after satisfying himself. In the instant case as indicated earlier, the Investigating Officer has not bothered to record the statement of the person who signed the cheques. There is nothing to show that the cheques were handed over to the accused. He, i.e. author of cheques, would be the best person person to state as to whom cheques were handed over for collecting money from the Bank. It was the duty of the Investigating Officer to collect the evidence indicating the entire procedure of preparing bills, competent authority examining the same and issuing cheques to the accused, and also the procedure followed in Bank for encashment of bearer cheques and that accused encashed cheques. A copy of this order shall be forwarded to the Secretary, Home Department who should inquire into the matter either personally or through the competent officer about the manner in which perfunctory investigation was carried out by the Investigating Officer. If the officers are investigating the matters in this manner, it is doubtful whether they will be in a position to investigate thoroughly without any bias and would be able to apprehend the real criminals. The Secretary shall report to this Court within the period of three months from the date of receipt of writ of this judgment.

9. The Appeal stands dismissed.

-oOo-

karim*